

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
UNITED STATES DEPARTMENT )  
OF THE NAVY, USS RANGER )  
(CV 61), )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 78-62

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a \$250 civil penalty for the alleged violation of Section 9.03 of respondent's Regulation I, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, at a formal hearing on June 26, 1978 in Seattle, Washington. David Akana presided.

Appellant was represented by its attorney, Lieutenant Commander Michael V. Riggio; respondent was represented by its attorney, Keith D. McGoffin.

1 Having heard the testimony, having examined the exhibits, and havi  
2 considered the contentions of the parties, the Board makes these

3 FINDINGS OF FACT

4 I

5 Pursuant to RCW 43.21B.260, respondent has filed a certified copy  
6 of its Regulation I and amendments thereto which are noticed.

7 II

8 On February 16, 1978 at about 8:26 a.m., respondent's inspector  
9 saw smoke from the stack of the USS RANGER which was docked at Pier 3  
10 in the Puget Sound Naval Shipyard, Bremerton, Washington. After taking  
11 several photographs, he made an observation over a period of 16  
12 consecutive minutes in which time he recorded 3 minutes of black smoke  
13 at a shade designated on the Ringelmann Chart as Ringelmann 4 to 5 and  
14 13 minutes of white smoke of 30 to 100 percent opacity. For the  
15 foregoing event, appellant was issued a notice of violation from which  
16 followed a \$250 civil penalty and the instant appeal.

17 III

18 Respondent's Regulation I, Section 9.03(b) makes it unlawful to  
19 cause or allow the emission of an air contaminant, here smoke, for a  
20 total of more than three minutes in any one hour which is darker in  
21 shade than that designated as No. 1 on the Ringelmann Chart or is of an  
22 opacity equal to or greater than 20 percent.

23 Section 9.16 provides that emissions resulting from startups, shut-  
24 downs, unavoidable failures, upsets or breakdowns will not be deemed  
25 violations of Regulation I providing that certain requirements are met.  
26 Section 3.29 provides for a civil penalty of up to \$250 per day for eac

27 FINAL FINDINGS OF FACT,  
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1 violation of Regulation I.

2 IV

3 The mission of the USS RANGER is the defense of the continental  
4 United States and control of sea lanes in time of war. It is both an  
5 offensive and defensive weapon. At the time of the violation, the ship  
6 was undergoing periodic overhaul at the Shipyard.

7 V

8 Section 118 of P. L. 95-95, August 7, 1977, provides:

9 (a) Each department, agency, and instrumentality of the  
10 executive, legislative, and judicial branches of the Federal  
11 Government (1) having jurisdiction over any property or  
12 facility, or (2) engaged in any activity resulting, or which  
13 may result, in the discharge of air pollutants, and each  
14 officer, agent, or employee, thereof, shall be subject to,  
and comply with, all Federal, State, interstate, and local  
requirements, administrative authority, and process and  
sanctions respecting the control and abatement of air  
pollution in the same manner, and to the same extent as any  
non-governmental entity. . .

15 (b) The President may exempt any emission source of any  
16 department, agency, or instrumentality in the executive  
17 branch from compliance with such a requirement if he  
18 determines it to be in the paramount interest of the United  
19 States to do so, . . . In addition to any such exemption  
20 of a particular emission source, the President may, if he  
21 determines it to be in the paramount interest of the  
United States to do so, issue regulations exempting from  
compliance with the requirements of this section any  
weaponry, equipment, aircraft, vehicles, or other classes  
or categories of property which are owned or operated by  
the Armed Forces of the United States (including the Coast  
Guard) or by the National Guard of any State and which are  
uniquely military in nature. . . .

22 We notice a portion of the Senate Congressional Record of June 10,  
23 1977:

24 Mr. THURMOND. Mr. President. I am somewhat concerned  
25 about the impact of section 16(b) of the bill on our military  
26 combat and combat-related sources during the period between  
enactment of this measure and the issuance of Presidential  
exemptions for such equipment.

27 FINAL FINDINGS OF FACT,  
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1 Will States and local governments have authority to  
2 impose their air emission standards and permit requirements  
3 on our military aircraft, Navy and Coast Guard vessels, tanks,  
4 and other military equipment during this interim period?

5 . . .  
6 Mr. MUSKIE. In answer to the Senator's question  
7 concerning State and local enforcement of their regulations  
8 between enactment of this amendment and issuance of  
9 Presidential exemptions, under this amendment, State and  
10 local governments are authorized to enforce substantive  
11 and procedural standards and procedural requirements for  
12 military combat and combat-related sources. I realize  
13 that imposition of these requirements may cause a  
14 hardship for the Department of Defense in attempting to  
15 comply, particularly in respect to conflicting air  
16 emission standards and permitting procedures. I would  
17 expect, however, that immediately following enactment,  
18 the Secretary of Defense would identify classes and  
19 categories of uniquely military equipment and property  
20 for which he intends to seek a Presidential exemption,  
21 and that he notify the President of his intention. Once  
22 identified, I would hope that State and local officials  
23 would respect the legitimate national defense  
24 determination of the Secretary of Defense in this respect,  
25 and that they would refrain from enforcing State and  
26 local air pollution regulations which otherwise might  
27 apply to such identified classes or categories until  
the President has had a reasonable opportunity to act.

. . . . .

16 The Navy, we are told, has prepared a draft list of certain military  
17 property pursuant to Section 118(b) and forwarded such list to the Secretary  
18 of the Navy. At this time, it appears that final action which would exempt  
19 such military property has not yet been completed by the Secretary of the  
20 Navy, the Department of Defense, and the President.

## 21 VI

22 Any Conclusion of Law which should be deemed a Finding of Fact is  
23 hereby adopted as such.

24 From these Findings the Board comes to these

25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

CONCLUSIONS OF LAW

I

Appellant violated Section 9.03(b) of respondent's Regulation I on February 16, 1978. The responsible personnel were aware of the regulation and of the availability of the exculpatory provisions of Section 9.16, but no report was made which might have relieved the violation in the instant matter. We can find nothing in the Clean Air Act, or portion of the Congressional Record presented, which would excuse the violation. Accordingly, the \$250 civil penalty should be affirmed.

II

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

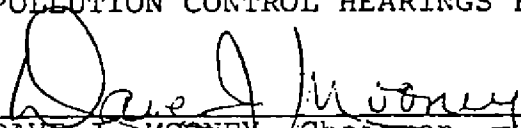
From these Conclusions the Board enters this

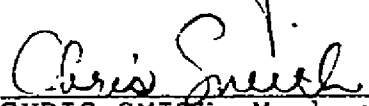
ORDER

The \$250 civil penalty is affirmed.

DATED this 27<sup>th</sup> day of July, 1978.

POLLUTION CONTROL HEARINGS BOARD

  
DAVE J. MOONEY, Chairman

  
CHRIS SMITH, Member

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